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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/060,188	04/14/1998	DOMINIC P. BEHAN		9333

7590 07/02/2002

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[REDACTED] EXAMINER

BASI, NIRMAL SINGH

ART UNIT	PAPER NUMBER
1646	

DATE MAILED: 07/02/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/060,188	Applicant(s) BEHAN et al						
	Examiner Nirmal S. Basi	Art Unit 1646						
								
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>								
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.								
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 								
Status <p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Apr 10, 2002</u>.</p> <p>2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>								
Disposition of Claims <p>4) <input checked="" type="checkbox"/> Claim(s) <u>34, 40, and 45-76</u> is/are pending in the application.</p> <p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6) <input type="checkbox"/> Claim(s) _____ is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8) <input checked="" type="checkbox"/> Claims <u>34, 40, and 45-76</u> are subject to restriction and/or election requirement.</p>								
Application Papers <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.</p> <p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>								
Priority under 35 U.S.C. §§ 119 and 120 <p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). <p>*See the attached detailed Office action for a list of the certified copies not received.</p> <p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p> <p>a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.</p> <p>15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</p>								
Attachment(s) <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">1) <input type="checkbox"/> Notice of References Cited (PTO-892)</td> <td style="width: 50%;">4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</td> </tr> <tr> <td>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</td> <td>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</td> </tr> <tr> <td>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</td> <td>6) <input type="checkbox"/> Other: _____</td> </tr> </table>			1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____	2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____
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3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____							

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DETAILED ACTION

The Amendment filed 4/10/02 has been entered.

The Amendment filed 4/10/02 introduced 147 species to claims 75. Upon consideration of Applicants Amendment and the 147 new species added to the claims, in elected Group I, it is
5 found that this application requires further restriction. The new Restriction with respect to Group I is:

Election/Restriction

1. This application contains claims directed to the following patentably distinct species of the claimed invention:
10 Species I-Species 147 correspond to Physiological Functions designated as 1-147, respectively, in claim 75. Therefore, Species 1 corresponds to Physiological Function 1, Species 2 corresponds to Physiological Function 2, Species 3 corresponds to Physiological Function 3, Species 4 corresponds to Location/ Physiological Function 4, etc.

15 Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Claims 69 and 70 are generic claims.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that
20 all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP

5 § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission 10 may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the 15 inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

4. Although the Examiner will respond to the Applicants Amendments dated 4/10/02 upon 20 receiving a response to the election of species contained in instant Action, Applicants are advised

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the Examiner can not find support for the Amended claims in the specification. Applicant is requested to provide specific page and line numbers to indicate where support, in the specification, for the Amended claims, can be found. If there is no support in the specification for the amended claims a "new matter" rejection will be made in the next Office Action. If there
5 are any question concerning the issues raised above the Applicant representative is invited to contact the Examiner to expedite prosecution.

Advisory Information

Any inquiry concerning this communication or earlier communications from the examiner
10 should be directed to Nirmal Basi whose telephone number is (703) 308-9435. The examiner can normally be reached on Monday-Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564. The fax phone number for this
15 Group is (703) 308-0294.

Official papers filed by fax should be directed to (703) 308-4242. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding
20 should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Nirmal S. Basi
Art Unit 1646
July 1, 2002

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Michael D. PAK
MICHAEL PAK
PRIMARY EXAMINER